

PHYSICIAN / SURGEON - R.S. 1261-1291

CHAPTER 15. PHYSICIANS, SURGEONS, AND MIDWIVES

PART I. MEDICINE, SURGERY, MIDWIFERY

§1261. Declaration of purpose

Recognizing that the practice of medicine, surgery, and midwifery is a privilege granted by legislative authority and is not a natural right of individuals, the state of Louisiana deems it necessary as a matter of policy in the interests of public health, safety, and welfare to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and from unprofessional conduct of persons licensed to practice medicine, surgery, and midwifery.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1262. Definition

As used in this Part the following words and phrases shall have the meanings ascribed to them:

(1) "The practice of medicine", whether allopathic or osteopathic, means the holding out of one's self to the public as being engaged in the business of, or the actual engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being, other than himself, whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied to or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician or midwife.

(2) "Physician" means a natural person who is the holder of an allopathic (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good standing with the board who holds a license, permit, certification, or registration issued by the board to engage in the practice of medicine in the state of Louisiana. Doctors of allopathic medicine (M.D.) and doctors of osteopathic medicine (D.O.) shall be accorded equal professional status and unrestricted privileges in the practice of medicine. The use of the term "physician" in this Part shall not be construed to prohibit the use of such term by other health care providers specifically authorized to use such term by any other lawful provision of this state.

(3) "Board" means the Louisiana State Board of Medical Examiners.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No.17, §1, eff. May 17, 2001; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1263. Louisiana State Board of Medical Examiners; appointment

A. The Louisiana State Board of Medical Examiners is hereby created within the Department of Health and Hospitals and is subject to the provisions of R.S. 36:803.

B.(1) Until January 1, 2000, the board shall consist of seven members, all appointed by the governor from lists of names submitted by the Louisiana State Medical Society and the Louisiana Medical Association. At least one of the members appointed to the board shall be a physician practicing in a parish or municipality with a population of less than twenty thousand people, and at least one member shall be appointed from the list submitted by the Louisiana Medical Association.

(2) Beginning on January 1, 2000, the board shall consist of seven voting members, all appointed by the governor and subject to Senate confirmation as follows:

(a) Four members from a list of names submitted by the Louisiana State Medical Society. One of the members so appointed shall practice in a parish or municipality with a population of less than twenty thousand people.

(b) Two members from a list submitted by the Louisiana Medical Association.

(c) One member from a list submitted by the Louisiana Academy of Family Practice Physicians.

C. All voting members of the board shall be graduate physicians or surgeons and practitioners.

Acts 1975, No. 350, §1. Amended by Acts 1977, No. 684, §14; Acts 1979, No. 433, §1; Acts 1999, No. 497, §2.

§1264. Vacancies; removal

A.(1) The governor shall fill all vacancies on the board from recommendations made according to R.S. 37:1263 for the unexpired term.

(2) The organizations required to submit recommendations for appointment under R.S. 37:1263 shall submit such lists at least sixty days prior to a vacancy due to the expiration of a term, or within thirty days following a vacancy due to any other cause.

B. The governor may remove any member of the board for inefficiency or neglect of duty.

Acts 1975, No. 350, §1; Acts 1999, No. 497, §2.

§1265. Term of members; appointment

A. Board members appointed pursuant to R.S. 37:1263(B)(1) shall serve until January 1, 2000. Except as provided in Subsection B of this Section, each subsequent member shall serve a term of four years. No member may serve more than three consecutive four-year terms. Any term which a member began serving prior to January 1, 2000, shall not be considered in determining that member's maximum permissible years of service.

B. Four of the members appointed for terms beginning January 1, 2000, shall be appointed to initial terms of four years and three of the members appointed for terms beginning January 1, 2000, shall be appointed to initial terms of two years. The members appointed to initial terms of two years are as follows:

(1) One of the members from a list submitted by the Louisiana State Medical Society.

(2) One of the members from a list submitted by the Louisiana Medical Association.

(3) The member appointed from a list submitted by the Louisiana Academy of Family Practice Physicians.

Acts 1975, No. 350, §1; Acts 1999, No. 497, §2.

§1266. Meetings of board

The board shall hold at least one regular meeting each year and special meetings as are necessary. A special meeting of the board may be called by the president at any place when a majority of the board, or its president, deems it expedient.

Acts 1975, No. 350, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1267. Quorum

Three members of the board constitute a quorum for all purposes including the holding of examinations, the granting of licenses and permits, and the rule making and adjudication

functions of the board.

Acts 1975, No. 350, §1.

§1268. Compensation and expenses of board

The members of the board shall receive the amount set by the board, but not to exceed one hundred dollars per diem when actually attending to the work of the board or any of its committees, and for the time spent in necessary preparation and travel. In addition, the board shall be reimbursed for the actual traveling, incidental, and clerical expenses incurred in carrying out the provisions of this Chapter. These expenses shall be paid out of the treasury of the board.

Acts 1975, No. 350, §1. Amended by Acts 1977, No. 521, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1269. Receipts and disbursements

All monies collected by the board shall be deposited in the treasury of the board. All expenses of the board and compensation of board members and employees shall be paid out of the funds of the board only and shall never be a charge on the state.

Acts 1975, No. 350, §1.

§1270. Duties and powers of the board

A. The board shall:

(1) Examine all applicants for the practice of medicine; issue licenses or permits to those possessing the necessary qualifications therefor; and take appropriate administrative actions to regulate the practice of medicine in the state of Louisiana;

(2) Have its seal; and

(3) Report to the prosecuting officer of the state all persons violating the provisions of this Part.

(4)(a) Examine all persons who perform diagnostic or therapeutic radiological examination or treatment or both in a private office of a physician;

(b) Issue certification to those possessing the necessary qualifications therefor; and

(c) Take appropriate administrative actions to regulate the administering of radiological examination or treatment or both in the private offices of physicians or in clinics in which physicians practice in the state;

(d) However, the Louisiana State Board of Dentistry shall regulate those personnel who perform such procedures under the direct on premises supervision of a licensed dentist.

(5)(a) Examine individuals who engage in the practice of clinical laboratory science in conjunction with the Clinical Laboratory Personnel Committee to the Louisiana State Board of Medical Examiners established by R.S. 37:1314.

(b) Issue licenses or certificates to those possessing the necessary qualifications therefor upon the recommendation of the Clinical Laboratory Personnel Committee.

(c) Take appropriate administrative actions to regulate the practice of clinical laboratory science in conjunction with the Clinical Laboratory Personnel Committee.

(d) Undertake all administrative actions, regulatory activities, and rules and regulations relative to the qualifications of individuals engaged in the practice of clinical laboratory science consistent with and not exceeding the scope and standards contained in the Clinical Laboratory Improvement Amendments of 1988 and the rules and regulations promulgated pursuant thereto.

(6)(a) Examine individuals who engage in the practice of clinical exercise physiology.

(b) Issue licenses to those possessing the necessary qualifications therefor.

(c) Take appropriate administrative actions to regulate the practice of clinical exercise physiology.

(7) Have the authority to:

(a) Request and obtain state and national criminal history record information on any person applying for any license, permit, certification, or registration which the board is authorized by law to issue.

(b) Require any applicant for any license, permit, certification, or registration issued by the board to submit a full set of fingerprints, in a form and manner prescribed by the board, as a condition to the board's consideration of his or her application.

(c) Charge and collect from an applicant for any license, permit, certification, or registration issued by the board, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining criminal history record information on the applicant.

(8) Have the authority to establish and determine by rule minimum requirements relative to continuing education for the renewal or reinstatement of any license or permit issued by the board.

B. The board may:

(1) Select officers and adopt rules and bylaws necessary for the efficient operation of the board;

(2) Authorize any member of the board to make any affidavit necessary to the issuance of any injunction or other legal process authorized under this Part;

(3) Employ counsel to carry out the provisions of this Part, if the fees of the counsel and the costs of all proceedings except criminal prosecutions, are paid by the board out of its own funds;

(4) Employ inspectors, special agents, and investigators; issue subpoenas to require attendance and testimony and the production of documents and things for the purpose of enforcing the laws relative to the practice of medicine and securing evidence of violations thereof; employ necessary clerical assistance to carry out the administrative work of the board, fix the compensation thereof; incur other necessary expenses; and acquire, develop, maintain, expand, sell, lease, mortgage, borrow funds or otherwise contract with respect to immovable property as it may deem necessary or appropriate to accomplish the provisions of this Part;

(5) Appoint or designate an examining committee of physicians, possessing appropriate qualifications, to conduct physical and mental examinations on a physician, to otherwise inquire into the physician's fitness and ability to practice medicine with reasonable skill and safety to patients, and to submit advisory reports and recommendations to the board, when the board has reasonable cause to believe that such physician's fitness and ability is affected by mental illness or deficiency, or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills, and/or excessive use or abuse of drugs, including alcohol; and

(6) Adopt rules, regulations, and standards necessary to carry out the board's duties, powers, and functions provided for in this Part.

C. The president and secretary of the board or any other member of the board so authorized by the board, may administer oaths in the taking of testimony upon any matters appertaining to the duties of the board.

Acts 1975, No. 350, §1; Acts 1984, No. 533, §1, eff. Jan. 1, 1985; Acts 1985, No. 302, §2; Acts 1987, No. 884, §1; Acts 1993, No. 396, §2, eff. Aug. 1, 1993; Acts 1995, No. 630, §1; Acts 1997, No. 295, §1; Acts 1999, No. 661, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1270.1. Physician assistants advisory committee

A. The Louisiana State Board of Medical Examiners Physician Assistants Advisory

Committee is hereby created within the Department of Health and Hospitals.

B.(1) The advisory committee shall consist of five members.

(2) Three members of the committee shall be licensed physician assistants. The physician assistant members of the advisory committee shall be appointed by the governor from a list of names submitted by the Louisiana Academy of Physician Assistants. At least one of the members of the advisory committee shall be a physician assistant practicing in a parish or municipality with a population of less than twenty thousand people.

(3) Each physician assistant member of the advisory committee shall:

(a) Be a citizen of the United States and a resident of Louisiana for one year immediately prior to appointment.

(b) Hold a current Louisiana license to practice as a physician assistant.

(c) Have had three years of experience in his respective field of practice.

(d) Be actively engaged in practice as a physician assistant at the time of appointment.

(4) There shall be two members of the advisory committee who shall be licensed supervising physicians who are appointed by the governor from a list of names submitted by the Louisiana State Board of Medical Examiners.

C. The duties and purpose of the advisory committee shall be to advise the Louisiana State Board of Medical Examiners on all matters specifically dealing with licensing or disciplining of physician assistants or the drafting and promulgating of regulations related to physician assistants. The advisory committee shall also review and make recommendations to the board on applications for licensure as physician assistants. The board shall not act on any matter relating to a physician assistant without first consulting with the advisory committee.

D. The advisory committee shall elect a chairman, vice chairman, and secretary.

E. Each member of the advisory committee shall serve a term of six years commencing from the date of his appointment. Each member will succeed himself in each subsequent term thereafter unless removed or replaced by the governor.

F. The advisory committee shall meet at least twice each year or more frequently as necessary as determined by the chairman or a majority of the members of the advisory committee.

G. Four members of the advisory committee shall constitute a quorum.

H. Each member of the advisory committee shall receive fifty dollars per day while engaged in the business of the advisory committee and also his hotel and traveling expenses if traveled by the most direct route to and from his respective place of residence. These expenses shall be paid out of the treasury of the Louisiana State Board of Medical Examiners upon the certificates of its president and secretary-treasurer.

Acts 1993, No. 662, §2, eff. June 16, 1993; Acts 1997, No. 316, §1.

§1271. License to practice medicine required

No person shall practice medicine as defined herein until he possesses a duly recorded license issued under this Part or a permit or registration as provided for herein.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1272. Qualifications of applicants

Any person who wishes to practice medicine shall:

(1) Be twenty-one years of age;

(2) Be a citizen of the United States;

(3) Be of good moral character;

(4) Present to the board a valid diploma from a medical college in good standing with the board or have been actively engaged in the practice of medicine, in a manner determined by the board to have been satisfactory, for not less than four years under a temporary permit issued pursuant to R.S. 37:1275; and

(5) Pass an examination which the board deems sufficient to test the applicant's fitness to practice medicine in this state. The board may design or administer its own examination, or it may use examinations from any national examining agency, either public or private as long as such examinations are, in its view, sufficient for such purpose.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 1988, No. 887, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1273. Repealed by Acts 2001, No. 17, §2; eff. May 17, 2001.

§1274. Issuance of license

If the requirements of R.S. 37:1272 or R.S. 37:1276 are met to the satisfaction of the board, the board shall issue to the applicant a license to practice medicine.

Acts 1975, No. 350, §1.

§1274.1. Laser surgery; requirements

Only persons licensed under the laws of this state to practice medicine, veterinary medicine, dentistry, or podiatry shall perform laser surgery.

Acts 1991, No. 433, §1.

§1275. Temporary or limited purpose permits

A. The board may issue temporary permits authorizing the practice of medicine for a designated period of time; may issue permits for specific purposes with restrictions as to the type of medical activities that may be engaged in; or may issue permits to, or require registration and approval of, medical personnel participating in educational and training programs which include the administration of medical services to patients.

B. The board may adopt rules and regulations establishing the necessary qualifications, requirements, and formalities for the issuance of such permits as are necessary for the adequate protection of the health and welfare of the citizens of this state.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1275.1. Canadian and Philippine doctors

A. Under the authority granted by R.S. 37:1275, the board may issue a temporary permit authorizing the practice of medicine for a time not to exceed five years, to a person licensed to practice medicine in Canada and a citizen of Canada or licensed to practice medicine in the Republic of the Philippines and a citizen of the Republic of the Philippines, if that person has obtained a work visa from the United States government. Thereafter, that person must obtain an immigration visa before his permit may be extended.

B. Such persons who wish to practice medicine under this Section shall:

(1) Be twenty-one years of age;

(2) Be of good moral character;

(3) Present to the board a valid diploma from a medical college in good standing with the board; and

(4) Pass an examination which the board deems sufficient to test the applicant's fitness to practice medicine in this state. The board may design or administer its own examination, or it may use examinations from any national examining agency, either public or private as long as such examinations are, in its view, sufficient for such purpose.

Added by Acts 1976, No. 370, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1276. Reciprocity; other states

The board may issue a license as provided for in R.S. 37:1274, without examination in this state, to any applicant possessing a valid, unrestricted license to practice medicine, whether allopathic or osteopathic, or osteopathy in any other state of the United States provided the board is satisfied that the license from the other state is based upon an examination and other requirements substantially equivalent to the requirements of this Part.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1277. Louisiana State Board of Medical Examiners; authorization to obtain criminal history record information

A. As used in this Section the following terms shall have the following meaning:

(1) "Board" means the Louisiana State Board of Medical Examiners.

(2) "Licensure" means any license, permit, certification, or registration which the board is authorized to issue.

(3) "Applicant" means an individual who has made application to the board for the issuance, renewal, or reinstatement of any form of health care practitioner licensure which the board is authorized by law to issue, including but not limited to licensure as a physician or surgeon pursuant to R.S. 37:1261 through 1291; as a podiatrist pursuant to R.S. 37:611 through 628; as a physician assistant pursuant to R.S. 37:1360.21 through 1360.38; as a midwife practitioner pursuant to R.S. 37:3240 through 3257; as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 through 3361; as an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001 through 3014; as a clinical laboratory scientist pursuant to R.S. 37:1311 through 1329; as a clinical exercise physiologist pursuant to R.S. 37:3421 through 3433; as an athletic trainer pursuant to R.S. 37:3301 through 3312; as an acupuncturist or acupuncturist's assistant pursuant to R.S. 37:1356 through 1360; as a private radiological technologist pursuant to R.S. 37:1292; or as a dispensing physician pursuant to L.A.C. 46:XLV 6501 through 6561.

(4) "Criminal history record information" means information collected by state and federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, criminal correctional supervision and release, but does not include intelligence for investigatory purposes, nor does it include any identification information which does not indicate involvement of the individual in the criminal justice system.

(5) "Bureau" means the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections.

(6) "FBI" means the Federal Bureau of Investigation of the United States Department of Justice.

B. In addition to any other requirements established by board rules, the board shall require an applicant, as a condition for eligibility for licensure:

(1) To submit a full set of fingerprints, in a form and manner prescribed by the board.

(2) To permit the board to request and obtain state and national criminal history record information on the applicant.

(3) To charge and collect from the applicant, in addition to all other applicable fees and

costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history record information on the applicant.

C. In accordance with the provisions and procedure prescribed by this Section, the board shall request and obtain state and national criminal history record information from the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections and the Federal Bureau of Investigation of the United States Department of Justice relative to any applicant for licensure whose fingerprints the board has obtained pursuant to this Section for the purpose of determining the applicant's suitability and eligibility for licensure.

D. Upon request by the board and upon the board's submission of an applicant's fingerprints, and such other identifying information as may be required, the bureau shall conduct a search of its criminal history record information relative to the applicant and report the results of its search to the board within sixty days from receipt of any such request. The bureau may charge the board a reasonable processing fee for conducting and reporting on any such search.

E. If the criminal history record information reported by the bureau to the board does not provide grounds for disqualification of the applicant for licensure under the applicable law administered by the board, the board shall have the authority to forward the applicant's fingerprints and such other identifying information as may be required to the FBI with a request for a search of national criminal history record information relative to the applicant.

F. Any and all state or national criminal history record information obtained by the board from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure. No such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

Acts 1997, No. 295, §1.

§1278. Application for or acceptance of license or permit; waiver of personal privileges

A. Any person applying for or accepting a license or permit to practice medicine or midwifery in this state shall, by applying for or accepting said license or permit, be deemed to have given his consent to submit to physical or mental examinations when so directed by the board and to waive all objections as to admissibility or disclosure of findings, reports, or recommendations pertaining thereto on the grounds of privileged communications or other personal privileges provided for by law.

B. Any person applying for, accepting, or holding a license or permit to practice medicine in this state shall be deemed, notwithstanding any privilege of confidentiality, to have given his authorization and consent to the disclosure to the board, by any physician or other health care provider and by any health care institution, of any and all medical records and information pertaining to such person's diagnosis, evaluation, treatment, and prognosis for any physical or mental condition, disease, illness, deficiency, or infirmity, when the board is acting upon a written complaint and it has reasonable cause to believe that his fitness and ability to practice medicine with reasonable skill and safety may be impaired by mental illness or deficiency, or physical illness, including but not limited to deterioration through the aging process or the loss of motor skills, and/or excessive use or abuse of drugs, including alcohol; however, any records or information obtained by the board pursuant to this Section shall not constitute public records and shall be maintained in confidence by the board until and unless such records or information are

admitted into the record of proceedings before the board pursuant to R.S. 37:1285.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 1987, No. 884, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1278.1. Production of patient records; maintenance of confidentiality

Notwithstanding any privilege of confidentiality recognized by law, no physician or health care institution with which such physician is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of the board for any medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by such physician under investigation; provided, however, that the identity of any patient identified in or by such records or information shall be maintained in confidence by the board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, the board shall cause any such medical records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates.

Acts 1987, No. 884, §1.

§1279. Suspension, revocation, or restriction of license; notice

A. In the event a license issued under this Part is suspended, revoked, or otherwise restricted by the board, the board shall notify the clerk of court in each parish where the licensed person has been practicing if the license was recorded in accordance with prior law. When a license is revoked, the clerk of court shall cancel such recordation. When a license is suspended, or otherwise restricted, the clerk shall note the suspension or restriction imposed thereon in the original recordation.

B. In addition thereto, the board shall also notify all agencies, boards, and organizations having reasonable need for such notice of any suspension, revocation, or restriction imposed upon a license or permit provided for in this Part.

Acts 1983, No. 153, §1; Acts 2001, No. 299, §1.

§1280. Renewals

A. Every license issued under this Part shall be renewed annually upon payment of the required renewal fee.

B. Any license not renewed may be suspended by unanimous vote of the board. The suspension is subject to review by the courts.

Acts 1975, No. 350, §1; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1281. Fees

A. The board shall establish a reasonable fee schedule for the issuance or renewal of any license or permit or for any other administrative function provided for in this Part, and the receipts from the payment of such fees are to be used to carry out the purposes of this Part. Such fee schedule may be modified from time to time as deemed necessary by the board.

B.(1) In addition to all other applicable fees and costs attendant to the issuance, renewal, or reinstatement of any license, certificate, permit, or registration issued to a physician by the board pursuant to this Part, the board shall charge and collect an additional annual fee of twenty-five dollars from each physician to be utilized for the identification, monitoring, assistance, and procurement of treatment of physicians suffering from substance abuse, chemical dependency, psychiatric conditions, or physical deficiencies which may interfere with their ability to practice medicine with reasonable skill and safety as defined in R.S. 37:1285(A)(25).

(2) The twenty-five dollar fee established in this Subsection shall be due and

payable at the time of application for the issuance, renewal, or reinstatement of any license, permit, certificate, or registration.

C.(1) In addition to all other applicable fees and costs attendant to the issuance, renewal, or reinstatement of any license, certificate, permit, or registration issued to a physician by the board pursuant to this Part, the board shall charge and collect an additional annual fee of seven dollars from each physician for the purpose of establishing and maintaining a continuing education program for physicians.

(2) The seven dollar fee established by this Subsection shall be due and payable at the time of application for the issuance, renewal, or reinstatement of any license, permit, certificate, or registration.

D.(1) The fees established in Subsections B and C of this Section shall not be collected from a licensed physician who has retired from active practice.

(2) The board may adopt rules and regulations to provide for certain other exemptions from payment of such fees.

Acts 1975, No. 350, §1; Acts 2000, 1st Ex. Sess., No. 138, §1.

§1282. Annual publication of list of license holders; evidence

The board shall publish annually a list of the names and residences of the holders of licenses issued under this Part. This published list shall be received in evidence by the courts as proof that the individuals named are duly registered. The board may strike from this list the name of any person whose license has been suspended or revoked, or may state therein any restriction imposed on such license.

The board may furnish such list to any agency, board, or organization having a reasonable need for such list.

Acts 1975, No. 350, §1.

§1283. Reports by board

The board shall report annually to the governor upon the condition of the practice of medicine in the state, make recommendations for the improvement of the practice, and send a record of the proceedings of the board during the year, together with the names of all physicians to whom the board issued licenses during the year.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001. §1284. Provisions relative to unlicensed physicians

Unlicensed physicians shall not be permitted to collect any fees or charges for services rendered, or be allowed to testify as a medical expert in any court, or execute public or legal documents as a physician, or hold any medical office, or be recognized by the state or parish or municipal corporation as a physician, or be entitled to enjoy any of the privileges, rights, or exemptions granted to physicians by the laws of this state.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1285. Causes for nonissuance; suspension; revocation; or the imposition of restrictions; fines; reinstatement; publication of action; stays

A. The board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued under this Part for the following causes:

(1) Conviction of a crime or entry of a plea of guilty or nolo contendere to a criminal charge constituting a felony under the laws of Louisiana or of the United States.

(2) Conviction of a crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or in connection with the practice of medicine;

(3) Fraud, deceit, or perjury in obtaining any diploma, license, or permit pertaining to this Part;

(4) Providing false testimony before the board or providing false sworn information to the board;

(5) Habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence;

(6) Prescribing, dispensing, or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification therefor or in other than a legal or legitimate manner;

(7) Solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading;

(8)(a) Performing, or assisting in the performance of, or procuring or abetting in procuring an abortion or termination of pregnancy during the third trimester of pregnancy or after viability of the fetus, unless the physician determines that such abortion or termination of pregnancy is necessary, in his best medical judgment, in order to save the life or health of the pregnant woman and/or of the fetus (unborn child):

(b) Performing or assisting in the performance of, or procuring, or abetting in the procuring of an abortion or termination of pregnancy after the first trimester:

(i) When the abortion or termination of pregnancy is contrary to or unnecessary in the best medical judgment of that physician; or,

(ii) When the operating physician lacks the training and experience to perform the procedure; or,

(iii) When the procedure is performed outside of a hospital licensed by the Department of Health and Hospitals, or its successor;

(9) Performing, or assisting in the performance of, or procuring, or abetting in the procuring of an abortion or termination of pregnancy:

(i) When the abortion or termination of pregnancy is contrary to or unnecessary in the best medical judgment of that physician; or,

(ii) When the operating physician lacks the training and experience to perform the procedure; or,

(iii) When the procedure is performed outside of a hospital licensed by the Louisiana Health and Hospitals Administration, or its successor;

(10) Efforts to deceive or defraud the public;

(11) Making or submitting false, deceptive, or unfounded claims, reports, or opinions to any patient, insurance company or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value;

(12) Professional or medical incompetency;

(13) Unprofessional conduct;

(14) Continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state;

(15) Immoral conduct in exercising the privileges provided for by license or permit issued under this Part;

(16) Gross, willful, and continued overcharging for professional services;

(17) Abandonment of a patient;

(18) Knowingly performing any act which, in any way, assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to an illegal

practitioner;

(19) Soliciting, accepting, or receiving anything of economic value in return for and based on the referral of patients to another person, firm, or corporation or in return for the prescription of medications or medical devices;

(20) Persistent violation of federal or state laws relative to control of social diseases;

(21) Interdiction or commitment by due process of law;

(22) Utilizing a physician's assistant without approval and recordation as required by law or permitting a physician's assistant, within his employment, to conduct activities outside of the designated scope of the assistant's approval and registration;

(23) Knowingly employing a physician's assistant whose conduct includes any of the causes enumerated in this Section;

(24) Knowingly misstating or misrepresenting the qualifications and certification of competency of any physician's assistant in order to obtain approval and registration of such person;

(25) Inability to practice medicine with reasonable skill or safety to patients because of mental illness or deficiency; physical illness, including but not limited to deterioration through the aging process or loss of motor skills; and/or, excessive use or abuse of drugs, including alcohol;

(26) Refusing to submit to the examinations and inquiry of an examining committee of physicians appointed or designated by the board to inquire into the physician's physical and mental fitness and ability to practice medicine with reasonable skill and safety to patients;

(27) Failure, by any physician or person performing, inducing or assisting an abortion, to exercise that degree of professional care and diligence and failure to take such measures as may constitute good medical practice, necessary to encourage or sustain the life and health of an aborted viable infant, when the death of the infant results. "Viable" means that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supporting systems;

(28) Taking the life of a viable infant aborted alive;

(29) The refusal of a licensing authority of another state to issue or renew a license, permit, or certificate to practice medicine in that state or the revocation, suspension, or other restriction imposed on a license, permit, or certificate issued by such licensing authority which prevents or restricts practice in that state, or the surrender of a license, permit, or certificate issued by another state when criminal or administrative charges are pending or threatened against the holder of such license, permit, or certificate; or

(30) Violation of any rules and regulations of the board, or any provisions of this Part.

(31) Failure by a physician to self-report in writing to the board any personal action which constitutes a violation of this Part within thirty days of the occurrence. A report shall not be required if the violation relates to a physician's ability to practice medicine with reasonable skill and safety by reason of substance abuse or psychiatric condition, provided such physician has, since the occurrence, executed a treatment contract with the Louisiana State Medical Society's Physicians Health Program, its successor program, or such other program as may be designated by the board, and is in full compliance with the terms and conditions of such contract.

(32) A violation of Part XIX of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, composed of R.S. 40:1299.36 through 1299.36.6.

B. The board may, in instances it deems proper, implement the above recited causes, by establishing appropriate regulations and standards pertaining thereto.

C. The board may, as a probationary condition, or as a condition of the reinstatement of any license or certificate suspended or revoked hereunder, require the license or permit holder to pay all costs of the board proceedings, including investigators', stenographers', and attorneys' fees, and to pay a fine not to exceed the sum of five thousand dollars.

D. Any license or permit suspended, revoked, or otherwise restricted by the board may be reinstated by the board.

E. The board's final decision in an adjudication proceeding under this Section, other than by consent order, agreement, or other informal disposition, shall constitute a public record, and the board may disclose and provide such final decision to any person, firm, or corporation, or to the public generally. The board's disposition of an adjudication proceeding by consent order shall not constitute a public record, but the board shall have authority and discretion to disclose such disposition.

F. No judicial order staying or enjoining the effectiveness or enforcement of a final decision or order of the board in an adjudication proceeding, whether issued pursuant to R.S. 49:964(C) or otherwise, shall be effective, or be issued to be effective beyond the earlier of:

(1) One hundred twenty days from the date on which the board's decision or order was rendered.

(2) The date on which the court enters judgment in a proceeding for judicial review of the board's decision or order pursuant to R.S. 49:964.

Acts 1975, No. 350, §1; Amended by Acts 1977, No. 498, §1; Acts 1977, No. 500, §1; Acts 1977, No. 525, §1; Acts 1985, No. 302, §2; Acts 1987, No. 884, §1; Acts 1988, No. 741, §1; Acts 1995, No. 993, §1; Acts 1999, Nos. 660, 788, §§1; Acts 2001, No.17, §1, eff. May 17, 2001.

§1285.1. Repealed by Acts 2001, No. 17, §2, eff. May 17, 2001.

§1285.2 Advisory Committee on Pain

A. The board shall establish the Advisory Committee on Pain, referred to in this Section as the committee. Membership of the committee shall include but not be limited to the following:

- (1) A member of the board.
- (2) A member of the Louisiana State Medical Society.
- (3) Four physicians specializing in pain management.
- (4) A representative of the Louisiana Society of Anesthesiologists.
- (5) A representative of the Louisiana Hospital Association.
- (6) One member of each of the following state licensing agencies:
 - (a) The Louisiana Board of Pharmacy.
 - (b) The Louisiana State Board of Nursing.
 - (c) The Louisiana State Board of Examiners of Psychologists.
- (7) The secretary of the Department of Health and Hospitals or his designee.
- (8) The commissioner of insurance or his designee.
- (9) A representative of the Louisiana division of the American Cancer Society.
- (10) Representatives of other health care professions and organizations deemed appropriate by the committee, the board, or both.
- (11) A representative of the Louisiana Hospice Association.
- (12) A representative of the Louisiana Association of Nurse Anesthetists, Ltd.

B. Under the direction and oversight of the board, the committee shall:

- (1) Examine current and proposed practice guidelines on pain management, identify

problems in current treatment and practice guidelines, and prepare any recommendations concerning practice guidelines on pain management to the board and to other boards with practice guidelines on pain management. Practice guidelines shall include but not be limited to the guidelines for the prescription of controlled substances for pain management in patients with chronic and intractable pain.

(2) Make recommendation to the board for any of the following if the commission or the board determines that such changes are necessary:

(a) Protection of the rights of patients with chronic and intractable pain.

(b) Assurance that quality and control in pain management provided in the state are maintained and enhanced.

(c) Changes in the Uniform Controlled Dangerous Substances Law.

(d) Elimination of impediments to pain management and access of patients with chronic and intractable pain to pain management services or substances.

(3) Examine the education of health care providers with respect to pain management, identify needs and deficiencies in such education, and recommend educational guidelines and strategies for the education of professionals, regulators, and the public.

(4) Determine if there are impediments to pain management in state medical assistance programs or workers' compensation policies.

(5) Review and evaluate coverage offered by managed care plans for pain management and the provision of information on pain management services available to plan enrollees.

(6) Examine the protection of consumer and patient rights with respect to pain management, identify needs and deficiencies in such consumer and patient protection, and recommend adequate cost-effective treatment.

(7) Examine methods to curtail abuse and excessive unwarranted use of pain medication and other controlled dangerous substances.

C. The committee shall hold its first meeting not later than October 1, 1997,* and shall elect a chair from its membership.

D. Not later than October 1, 1998, the committee shall submit a report to the board of its findings and recommendations. The board shall review the report and submit the report, and the board's response to the committee's findings and recommendations together with the board's recommendations, to the House and Senate Committees on Health and Welfare and the presiding officer of each house within ninety days of receipt of the report.

E. Staff of the board shall provide technical, clerical, and other support necessary for the committee to carry out its responsibilities under this Section.

Acts 1997, No. 1470, §1, eff. Jan. 1, 1998.

*As appears in enrolled bill.

§1286. Injunction; penalty; attorney fees; costs

A. The board, through its proper officer, may cause to issue in any competent court, a writ of injunction enjoining any person from practicing medicine as defined herein until such person obtains a license under the provisions of this Part. This injunction shall not be subject to being released upon bond

B. In the suit for an injunction, the board, through its president, may demand of the defendant a penalty of not more than five hundred dollars, and attorney's fees not to exceed one hundred dollars, besides the costs of court. This judgment for penalty, attorney's fees, and costs may be rendered in the same judgment in which the injunction is made absolute.

C. The trial of the proceeding by injunction shall be summary and by the judge without a

jury.

Acts 1975, No. 350, §1; Acts 1985, No. 302, §2; Acts 2001, No. 17, §1, eff. May 17, 2001.

§1287. Protected action and communication

A. There shall be no liability on the part of and no action for damages against any member of the board, or its agents or employees, or any member of an examining committee of physicians appointed or designated by the board, for any action undertaken or performed by such person within the scope of the duties, powers, and functions of the board or such examining committee as provided for in this Part when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.

B. No person, committee, association, organization, firm, or corporation providing information to the board without malice and in the reasonable belief that such information is accurate and, whether as a witness or otherwise, shall be held, by reason of having provided such information, to be liable in damages under any law of the state of Louisiana or any political subdivision thereof.

C. In any suit brought against the board, its employees or agents, any member of an examining committee appointed by the board or any person, firm, or other entity providing information to the board, when any such defendant substantially prevails in such suit, the court shall, at the conclusion of the action, award to any such substantially prevailing party defendant against any such claimant the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this Section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

D. There shall be no liability on the part of and no action for damages against any nonprofit corporation, foundation, or organization that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist any licensed physician who suffers or may suffer from alcohol or substance abuse or a physical or mental condition which could compromise such physician's fitness and ability to practice medicine with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

E. There shall be no liability on the part of and no action for damages against any person who serves as a director, trustee, officer, employee, consultant, or attorney for or who otherwise works for or is associated with any nonprofit corporation, foundation, or organization that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist any licensed physician who suffers or may suffer from alcohol or substance abuse or a physical or mental condition which could compromise such physician's fitness and ability to practice medicine with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

F. In any suit brought against any nonprofit corporation, foundation, organization, or person described in Subsection D or E of this Section, when any such defendant substantially prevails in the suit, the court shall, at the conclusion of the action, award to any substantially

prevailing party defendant against any claimant the cost of the suit attributable to such claim, including reasonable attorney fees, if the claim was frivolous or brought without a reasonable good faith basis. For purposes of this Subsection, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains a judgment for damages, permanent injunction, or declaratory relief.

G. The immunity granted under Subsections D and E of this Section shall be retroactive.

Acts 1975, No. 350, §1; Acts 1987, No. 884, §1; Acts 1988, No. 741, §1; Acts 1997, No. 314, §1, eff. June 17, 1997.

§1287.1. Reports to the board of convictions and entry of pleas of guilty or nolo contendere of felonies; immunity

A. Within thirty days of the conviction or entry of a plea of guilty or nolo contendere of or by a physician licensed under the laws of the state to a crime which constitutes a felony, or for any crime which is related to the practice of medicine, the court imposing sentence upon such physician shall make a reasonable effort to cause notice of the conviction or plea to be forwarded to the board.

B. There shall be no liability on the part of and no action for damages against any court or member of the judiciary for providing the information required under Subsection A of this Section.

Acts 1999, No. 763, §1.

§1288. Anesthetics; administering by midwives

No person holding a certificate to practice midwifery shall administer any form of anesthetic to any person under his care unless done by the direction and under the supervision of a licensed physician or unless otherwise expressly authorized to do so by the board.

Acts 1975, No. 350, §1.

§1289. Itinerant vendors of drugs

No itinerant vendor shall profess to cure or treat disease or deformity by any drug, nostrum, manipulation, or other expedient which he may offer for sale or demonstration.

Acts 1975, No. 350, §1.

§1290. Penalties

Whoever violates any of the provisions of this Part shall, for each offense, be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or imprisoned for not less than ten days nor more than five months, or both.

Acts 1975, No. 350, §1.

§1291. Exemptions

None of the provisions of this Part shall apply to:

(1) Any commissioned physician or surgeon of the United States Army, Navy, or Public Health Service, practicing in the discharge of his official duties;

(2) The administration of first aid in cases of emergency;

(3) Practitioners of allied health fields, duly licensed, certified, or registered under other laws of this state;

(4) Anyone attending a woman in childbirth in an emergency;

(5) The practice of Christian Science or religious rules or ceremonies as a form of religious worship, devotion or healing, if the persons administering, making use of, assisting, or prescribing this practice rely on faith and prayer alone, do not prescribe or administer drugs, or medicine, or perform surgical or physical operations, or assume the title of, or hold themselves out to be, physicians or surgeons.

Acts 1975, No. 350, §1.